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December 8, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: **Ex Parte Presentation**
WT Docket No. 03-128

Dear Ms. Dortch:

On December 5, 2003, Crown Castle USA ("Crown Castle") met with Jeffrey Steinberg and Amos Loveday of the Wireless Telecommunications Bureau to discuss the FCC's efforts to finalize a Nationwide Programmatic Agreement ("NPA") for the Section 106 review of proposed facilities required under the National Historic Preservation Act. Copies of the attached presentation were provided to Mr. Steinberg and Mr. Loveday. Representing Crown Castle were Barbara Hamilton, Regulatory Attorney and myself.

In the meeting, Crown Castle expressed its concern that one particular provision of the Draft NPA, if not rectified, could inadvertently undermine a fundamental NPA objective of streamlining Section 106 review requirements in situations where historic resources are not likely to be affected. The provision in question is "Exclusion No. 1," which states that a tower modification that "does not involve a collocation" and "does not substantially increase the size of the existing tower" is an "undertaking" that would be excluded from Section 106 review.

While Crown Castle wholeheartedly agrees that the actions contemplated in Exclusion No. 1 are not subject to Section 106 review, these types of actions are not properly categorized as Undertakings because they do not require or involve the issuance of a Federal permit, license, or approval. As a practical matter, if such "non-collocation" modifications are classified as Undertakings, these actions (which could be as innocuous as replacing a fence around a tower compound, planting new scrubs or landscaping at a site, or installing air conditioners or back-up power to a site) could become subject to Tribal consultation. This would certainly be the case if the proposed Navajo Nation language (in Section III.B. of the Draft) is adopted in the final NPA. Crown Castle believes that categorizing the types of actions encompassed in Exclusion No. 1 as Undertakings (and therefore subject to FCC regulatory oversight) would be an improper extension of the FCC's authority and would thus be subject to judicial challenge.

The NPA should clarify that "a modification that does not involve a collocation and does not substantially increase the size of an existing tower" is not an Undertaking and is not subject to Section 106 review. Exclusion No. 1 should be eliminated.

Crown Castle also emphasized its strong support for the language (listed in “Alternative A”) proposed by the FCC for consultation with Indian tribes. Alternative A would establish a rigorous set of requirements that would ensure that applicants provide tribes with a bona fide opportunity to participate in the consultation process. On the other hand, Alternative B in the Draft NPA would accord Indian tribes with the regulatory authority to issue “approvals” and “denials” for FCC actions. Neither the National Historic Preservation Act nor the ACHP regulations convey such sweeping authority to Indian tribes.

Pursuant to §1.1206(b) of the Commission’s rules, this letter is being electronically filed with your office. Copies are also being provided to Mr. Steinberg and Mr. Loveday. Please reference any questions in connection with this matter to me at 724-416-2349.

Sincerely,

/s/ Sheldon Moss

Sheldon Moss
Director, Government Affairs

attachment

cc: Amos Loveday
Jeffrey Steinberg